CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr.
GENERAL

CCPR/C/SR.1157
18 August 1992

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1157th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 July 1992, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Mongolia (continued)

* The summary of the second part (closed) of the meeting appears as document CCPR/C/SR.1157/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-16480/5030H (E)

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Mongolia (CCPR/C/64/Add.2) (continued)

1. The CHAIRMAN invited members of the Committee to present their final observations on the third periodic report of Mongolia.

2. Mr. ANDO thanked the Minister of Justice of Mongolia for his efforts to supplement the report of the State party by replying, virtually single-handedly, to the various questions raised by members. Everything was clearly in a state of evolution in Mongolia and a substantial number of laws and, in particular, regulations were being reviewed and amended. The impression which he himself had received from the exchange between the Committee and the delegation was that Mongolia was endeavouring to base its legislation on the international human rights instruments and the authorities were therefore following the proper course.

3. More specifically, he wished to raise the issue of relations between Mongolia and the outside world. After so many years of isolation, the country no longer had any reason to remain isolated and should be able to approach the rest of the world for help and assistance so that it could bring its restructuring work in the field of human rights to a successful conclusion. He was sure that Mongolia would not refuse external assistance and would endeavour to base its structures on more universal concepts while preserving its own traditions and culture. In that connection, the assistance of the United Nations and, in particular, the Centre for Human Rights could be useful.

4. Miss CHANET observed that the presence of the Minister of Justice was proof of Mongolia's regard for the Committee, but it had to be said that the written report was somewhat terse and the replies given during the meeting had often merely referred the Committee to reforms not yet achieved. The scale of the task undertaken by Mongolia must certainly be recognized, as the country had already prepared a new Constitution and had adopted 60 new laws while an additional 60 were in course of preparation and, according to the Minster of Justice, 475 laws were to be repealed and replaced by others. The delegation had said that the new legislation would be consistent with the Covenant and she hoped that the comments of members of the Committee on ways of implementing the Covenant would be taken into consideration.

5. Her own comments related to article 4, regarding which the Minister of Justice had said that a law on states of emergency was in the course of preparation. The list of rights which could not be derogated from, as contained in article 19, paragraph 2 of the Constitution, should be expanded to include all the rights set out in article 4 of the Covenant, as those were fundamental rights and liberties which could not be derogated from even in a state of emergency and martial law. The law must also specify more clearly situations in which a state of emergency could be declared as well as measures which could be taken under that state.

6. Concerning article 6 and the death penalty, the delegation had said that 12 crimes were still subject to the death penalty and that there had been 20 executions during the period covered by the report. Bearing in mind the general worldwide trend towards the abolition of capital punishment, there were still too many cases subject to that penalty in Mongolian law and too many executions; further efforts were needed in that field.

7. In connection with article 10 of the Covenant (treatment of detainees), the delegation had pointed out that the Corrective-Labour Code had been widely criticized and that it was being humanized. In that connection, she invited the Mongolian authorities to study the general comments of the Committee on article 10, which should be read together with those on article 7; they would see that it was not so much a question of humanizing the penal system as of guaranteeing respect for the dignity of the detainee so that he would not be subjected to constraints other than those which were of necessity linked to the loss of liberty. Moreover, what was sought was reintegration into society rather than ideological re-education. Article 10 provided for a special system for minors and, there again, Mongolia should take the general comments of the Committee into consideration in its reform of the law.

8. On the issue of exit visas, the delegation had said that the system had fallen into disuse and that practice had overtaken legislation. However, for the security of citizens, practice should be confirmed in a new law more consistent with article 12 of the Covenant, which stipulated the right of any person to leave any country, including his own. She hoped that her recommendations would be transmitted to the Mongolian Government.

9. Mr. WENNERGREN said that he had listened with interest to the delegation of Mongolia as it had expressed the views of that country's authorities and had provided information on the process currently under way. The authorities were clearly on the right road, namely, the strengthening of human rights and the rights of citizens, but much remained to be done. The Centre for Human Rights, other specialized bodies and foreign experts could provide advice in that connection. In his view, it was very important that Mongolia had decided to base itself on its own culture and traditions inherited from the past in its efforts to build a modern society. The choice of the emblem of the country, as described in the Constitution, was a good illustration of the desire to preserve tradition when building the Mongolia of the future.

10. In practical terms, he was anxious to clarify the position given to the Covenant in the Mongolian legal system and he strongly recommended the authorities to study that point carefully with a view to giving the provisions of the Covenant the full importance which they derived from that instrument. If the Covenant was to become part of internal law, its text must be published and be applied by judges and the administrative authorities in the same way as internal law. It seemed that the Mongolian authorities were aware of the problems which had to be resolved in that field and he was optimistic regarding the success of that process.

11. The remedy of habeas corpus seemed in particular to represent a new concept for the Mongolian legal system; that was not unusual. Japan, for

example, had had to promulgate a special law on habeas corpus in order to conform with the requirements of the Covenant. Perhaps Mongolia would do the same.

12. Concerning the role of the judiciary and the control exercised over the public authorities, such as the administration, the police and the military, consideration must be given to introducing general provisions which would permit private individuals to have recourse to a court against administrative measures or decisions which they considered to violate the rights proclaimed in the Covenant and in the Constitution. The courts were not enough in themselves to exercise general control over the administration, the agents of the State and the law enforcement authorities, as the initiative did not rest with them; it was private individuals considering themselves injured who should seek justice by requesting consideration of a measure. Consideration might be given to the establishment of a human rights commission or committee or some other organ which would exercise the general control that had previously lain with the Procurator. In earlier times, the Procurator had played the role of mediator, or ombudsman in other societies. Perhaps that role of Procurator should be restored to its former importance.

13. The rules on judicial procedure should perhaps be reconsidered in Mongolia and aligned with the rules laid down in the Covenant. In conclusion, he noted with satisfaction that a Press Act was currently under consideration by Parliament and that Mongolia was contemplating the adoption of a law on conscientious objection. Those were all positive elements in the exercise of human rights and the protection of the individual.

14. Mr. EL SHAFEI expressed appreciation of the explanations of the Minister of Justice of Mongolia regarding the human rights situation in his country. He wished to stress first of all, however, the importance of publicizing the text of the Covenant and the Optional Protocol, both among the population at large and among magistrates, lawyers and prison administration personnel. Mere accession to a treaty was not enough; it must be accompanied by widespread dissemination of its provisions.

15. Secondly, it did not seem to him that the Covenant enjoyed its proper place in the domestic legislation of Mongolia. Although some amendments had been made to the law, there were still gaps that must be filled in order to ensure its conformity with the Covenant and it was to be hoped that that point would be taken into account in the future. He had in mind, in particular, article 6 and the number of cases carrying the death penalty in Mongolia. It was true that the Penal Code had been amended, but the authorities should take fuller account of the provisions of article 6, and of the Second Optional Protocol, on the abolition of the death penalty. In the case of article 14 and the right to a fair trial and a public hearing, the relevant legislation still contained gaps, and a number of amendments should be envisaged. Nor did the laws on freedom of assembly and association and the formation of political parties comply with all the provisions of the Covenant.

16. He understood that the existence of traditions deeply rooted in society did not necessarily favour the strict application of the international

treaties and instruments to which a country had subscribed. It was thus one of the Government's duties to see to it that tradition did not constitute an obstacle to respect for the obligations contracted by the State.

17. Mrs. HIGGINS said that the information given by the Minister of Justice, in addition to that in the written report, as well as information she had gathered herself, had convinced her that the human rights situation had developed favourably in Mongolia. She had in mind, among other things, the new Constitution, the elimination of the military courts, the plan to revise the Penal Code, wide religious freedom, the drafting of 60 new laws and the work in progress on others. She felt, however, that the dialogue with the Mongolian delegation had not been really fruitful because the replies that had supplemented the report, which was sometimes extremely brief, had often been insubstantial. Though many laws were under preparation in numerous fields, no details had been given as to the content of the most important legislative texts. The Committee had simply been told that they would be drafted in conformity with the Covenant, with no information as to the key elements of the new legislation.

18. Some very detailed questions had been asked, reflecting the concern felt by the members of the Committee about article 4 in particular, and about the measures derogating from that article, which seemed to be provided for by the Constitution in connection with the proclamation of states of emergency. No reply had been given. Article 12 had also been the subject of many detailed comments; in its replies, however, the delegation had simply reaffirmed that exit visas were no longer necessary. The Committee was still unaware what the law said, or would say, or even if it would take into account the key elements of legislation of the kind the Committee members had been at pains to outline. In regard to article 25, the Committee had asked why 801 had been chosen as the number of signatures needed to enable a political party to be registered and why indeed parties had to be registered at all since that was not required by the Covenant. The answer had been that that was the law. Nor had she learned much about the implementation of articles 9 and 14.

19. Although members of the Committee had expressed concern in regard to article 6 (right to life), the Mongolian delegation had been very chary of providing information, leaving many questions unanswered. Therefore, she had some anxiety about the heralded review of the legislation, particularly since the Constitution authorized limitations. There again, the Committee did not know what the future laws would be. It was therefore extremely important that, when the texts were reviewed, care was taken to see that the limitations and restrictions introduced were compatible with those authorized by each article of the Covenant, and that the future legislation provided effective guarantees for all the rights protected by the Covenant. What the Minister of Justice had said about freedom of assembly confirmed her fears, since the plan was apparently to maintain prior authorization for assemblies and to leave it to the mayors to determine when an assembly was legal.

20. She had spoken about her misgivings because she knew, having already seen the evidence, that Mongolia was truly determined to do everything in its power to give effect to human rights and that a clear start had already been made in that direction. She hoped that the authorities would take very seriously into consideration the comments and remarks made during the dialogue between the

Committee and the delegation, and that they would consult the summary records of the discussion to see what had been said on each article of the Covenant. The Centre for Human Rights would, of course, lend its assistance in that connection. In conclusion, she expressed the hope that Mongolia's efforts to give effect to human rights while at the same time preserving its own traditions and culture would be crowned with success.

21. Mr. SADI again expressed his satisfaction at the presence before the Committee of the Minister of Justice, which bore witness to the Government's determination to embark on a fresh course. The Government had taken a valuable first step by organizing elections in 1990, and the experience gained would make it possible to install a genuine multi-party system.

22. He had no doubt that the new Constitution reaffirmed the great principles of the Covenant, but it was essential that those principles should be translated into laws and regulations. Accession to the Optional Protocol was a good augury, but both that instrument and the Covenant must be made known to the population. It was also important to specify the place of the Covenant in domestic law and to see to it that the new legislation adopted during the current difficult transitional period took all its provisions into account.

23. Mr. MÜLLERSON thanked the Mongolian delegation for its replies, made more numerous by the fact that the written report was no longer up to date. Clearly, Mongolia was experiencing all the problems that beset the countries of the former communist world in the current period of transition, and its task was no easy one. Nevertheless, the dialogue with the Committee had brought out certain topics of concern. More specifically, it was not clear whether the former legislation was still applied and what was the content of the bills undergoing their first reading in parliament. His impression from the discussion was that practice was very fluid, which was hardly propitious for respect for human rights. It must be recognized that it was essential for legislation to be put into effect as soon as possible to protect the rights and freedoms of citizens in order to prevent anyone from taking advantage of the transitional situation in order to impose restrictive practices.

24. Very often States parties invoked special historical, religious, demographic or other reasons to justify particular practices that infringed the Covenant. The Committee always tried to understand each country's special difficulties, but the Covenant contained a minimum set of guarantees which any State that truly wished to respect human rights was in a position to apply. That made it all the more important to make the Covenant known to all sectors of the population, in particular, of course, the magistracy.

25. Mr. PRADO VALLEJO stressed the importance of the dialogue that had been established with the Committee, thus allowing it to discern a new spirit in the Mongolian Government and a genuine commitment on behalf of human rights. It would be an illusion to imagine that the transition from a dictatorship to a democracy could be completed in a single day. Nevertheless, some of the new directions were not in conformity with the Covenant. Such was the case of the constitutional provisions governing states of emergency, the grounds for proclaiming which were too wide and too many for the purposes of the Covenant. Similarly, it was essential for machinery to be put in place to

prohibit torture and to enable an investigation to be started as soon as an act of torture was denounced, and to allow for the immediate punishment of those responsible and for compensation for the victim. The right of habeas corpus should apply in all cases and anyone arrested should be informed of his rights and of the grounds for detention at the time of arrest, not after a period that was not even specified in the legislation. Freedom of expression should be guaranteed without condition or limitation, which was not the case under the new Mongolian legislation, and, similarly, the right of assembly and association should be subject only to the restrictions established in the Covenant. Lastly, there were too many offences carrying the death penalty in Mongolia; although the Covenant did not prohibit capital punishment, it expressly stipulated that it should be imposed only in extremely serious cases. The worldwide trend was towards abolition.

26. Through the delegation, he addressed his best wishes to the Mongolian Government for success in its efforts to enhance human rights.

27. The CHAIRMAN thanked the Mongolian delegation for its replies to the questions, the great number of which was explained by the fact that the periodic report before the Committee was out of date. Some indications gave grounds for hoping that an era of respect for human rights had begun: for example, the adoption of the new Constitution, the elimination of the military courts and the steps taken to ensure wider freedom of opinion and religion. Nevertheless, the replies provided were not entirely satisfactory since they did not explain to what extent the former legislation still applied and what the content of the new laws was. The place of the Covenant in Mongolian domestic law was not clear and it was necessary to publicize that instrument widely among the population, and, in particular, among those responsible for applying the law.

28. The members of the Committee had drawn attention to the marked discrepancies between Mongolian legislation and certain articles of the Covenant - in particular, article 4, which specified the grounds for the proclamation of a state of emergency, and article 6, which guaranteed the right to life. Although the number of executions had declined during the period under consideration, it remained very high, and capital punishment was still provided for too large a number of offences. The rights of persons under arrest and detention, as set forth in articles 9 and 10 of the Covenant, were not perfectly guaranteed by a penitentiary system that was directed more towards repression than social rehabilitation, and, finally, freedom of movement and freedom of expression, association and assembly remained very limited.

29. He requested the Mongolian delegation to convey the Committee's observations to its Government and to assure it that the Committee was permanently at its disposal to assist it with the advice which it was its mission to provide.

30. Mr. AMARSANAA (Mongolia) said that the Committee's questions, comments and criticisms bore witness to its interest in the development of the situation in Mongolia. All the proposals that had been made, as well as the provisions of the Covenant, would be duly taken into account in the preparation of the new laws.

31. The Mongolian population had the courage and strength needed to make Mongolia a more democratic and humane country by reorganizing it in the sense of a strengthened social and political base, with due respect for its sovereignty and that of other States.

32. His delegation wished the Committee, as a respected body speaking with authority on human rights matters, every success in carrying out its mission.

33. The CHAIRMAN announced that the Committee had completed its consideration of the third periodic report of Mongolia. The fourth periodic report was due on 4 November 1995.

34. The Mongolian delegation withdrew.

The public meeting rose at 11.30 a.m.